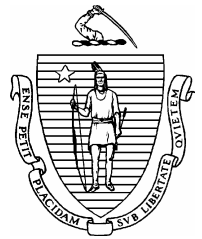




Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0026

IN THE MATTER OF PETER MURPHY

DISPOSITION AGREEMENT

The State Ethics Commission and Peter Murphy enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 26, 2005, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Murphy. The Commission has concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Murphy violated G.L. c. 268A.

The Commission and Murphy now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. Murphy served as a Springfield Liquor License Commissioner from early 2002 until December 2003.

2. The Liquor License Commission had the authority to issue liquor licenses, renew liquor licenses each year, and investigate any license holder for any alleged noncompliance with the liquor laws. If violations were found, the commission could impose sanctions including loss of license. Such matters were within the scope of Murphy's official duties.

3. Among the liquor stores under the jurisdiction of the Liquor License Commission was Kappy's Liquors.

4. In December 2002 and December 2003, Murphy received from Kappy's gift certificates whose total value each year was about \$200.

5. Murphy did not directly benefit from the certificates. He never used them himself, nor did he return them unused to Kappy's. Instead, according to Murphy, he gave them to third parties. More specifically:

- a. Murphy gave the December 2002 certificates to a charity.

- b. Murphy gave the December 2003 certificates to a family member who gave them to a friend and the Murphy's babysitter.

6. Murphy never disclosed in writing to anyone that he had received gift certificates from Kappy's.

7. In or about late November or early December 2002 and 2003, the Liquor License Commission, with Murphy participating, reviewed and voted to approve Kappy's liquor license renewal.

8. In addition to renewing Kappy's license, the Liquor License Commission had the authority to investigate Kappy's for any alleged noncompliance with the liquor laws and, if violations were found, to impose sanctions including loss of license.

9. During Murphy's tenure on the Commission, Kappy's was never alleged to have engaged in any potential license violations.

Conclusions of Law

10. As a Springfield Liquor License Commissioner, Murphy was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

11. Section 23(b)(3) prohibits a municipal employee from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

12. In applying § 23(b)(3), the Ethics Commission will evaluate whether the public employee is poised to act in his official capacity and whether, due to his private relationship or interest, an appearance arises that the integrity of the public official's action might be undermined by the relationship or interest. *In re Flanagan*, 1996 SEC 757 (January 17, 1996 decision and order).

13. Murphy's receipt of the gift certificates from Kappy's at or around the time that a vote on Kappy's annual license renewal would normally occur created an appearance that the integrity of his official actions might be undermined. Thus, Murphy knowingly or with reason to know acted in a manner that would cause a reasonable person having knowledge of the relevant circumstances to conclude that Kappy's Liquors can improperly influence or unduly enjoy Murphy's favor in the performance of his official duties, or that Murphy is likely to act or fail to act as a result of the undue influence of Kappy's.

14. Murphy never filed a disclosure to dispel this appearance problem.

15. Accordingly, Murphy violated § 23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A by Murphy, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Murphy:

- (1) that Murphy pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A; and
- (2) that Murphy waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 21, 2006